

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

January 30, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, January 30, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the December 12, 2014 meeting will be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

(a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

(b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

(c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2015-5: BIG BLUE RENTALS, LLC.** – appeals for a variance to reduce the required front setback from 20 feet to 5 feet in order to install parking and drive aisles in a Planned Neighborhood Residential (R-3) zone, at 178 Leader Avenue (Council District 3).

The Staff Recommends: Postponement, for the following reasons:

a. Although the requested setback variance does have some merit, there are major concerns about the functionality of the proposed layout of the parking lot. Therefore it is premature to grant a dimensional variance without the approval of Traffic Engineering and other Departments and/Divisions of the Urban County Government regarding the design of the parking layout.

b. A revised layout may not require the same variance as is requested with this current application.

2. **V-2015-7: DB HOMES, LLC** - appeals for a variance to reduce the required sideyard from 25 feet to 22 feet to construct a new residence in an Agricultural Rural (A-R) zone, at 3821 Winchester Road (Council District 12).

The Staff Recommends: Approval of the requested variance, for the following reasons:

a. Granting the requested variance should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter the existing relationship of the subject property and surrounding residential properties.

b. The owners of the subject property foresee the need for a family member to utilize a wheelchair; therefore, a single-story floor plan without steps will be very advantageous for them and will provide handicap accommodation.

- c. The size and frontage of the lot do not conform to the requirements of the A-R zone; and this status is a unique circumstance about the applicant's property, when compared to the majority of properties located in the A-R zone.
- d. The size and frontage of the lot are the result of the original platting, prior to the enactment of the current Zoning Ordinance requirements, and are not the result of any action taken by the applicant.
- e. Strict application of the Zoning Ordinance would deprive the applicant of the reasonable use of the property by disallowing the construction of a residence adequate for their changing mobility and health care needs.

This recommendation of approval is made subject to the following conditions:

- 1. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection and the Fayette County Health Department, in the event a septic system is required for the new dwelling.
- 2. The proposed residence shall be constructed in accordance with the submitted application and site plan.

D. Conditional Use Appeals

- 1. **CV-2014-75: REMNANT COMMUNITY CHURCH** – appeals for a conditional use permit to establish a church; and a variance to eliminate the perimeter landscaping requirement in a Wholesale and Warehouse Business (B-4) zone, at 1125 Commercial Drive (Council District 5).

The Staff Recommends: Approval of the Conditional Use, for the following reasons:

- a. Granting the requested conditional use for a church should not adversely affect the subject or surrounding properties. Parking will be adequately addressed, both onsite and through the use of parking agreements with nearby property owners. The expected hours of operation of this church will likely be during the hours that most of the adjacent businesses are closed.
- b. All necessary public facilities and services are available and adequate for the proposed church.

The Staff Recommends: Approval of the landscape variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare. It will not alter the character of the vicinity or cause a nuisance to the public, since most other properties in this area have a similar lack of landscaping.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the required landscape areas are minor in scope and would likely be very difficult to install and maintain. The fact that the adjacent properties have installed service and loading areas directly adjacent to the subject property (which means that installation of the required landscaping may impede their operations) is a unique circumstance to this property.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant (and potentially the neighboring properties), as this would be the only property on the north side of Commercial Drive that has installed the required perimeter landscaping, which would likely hinder vehicular circulation.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance, as the subject property was originally developed prior to the adoption of the current Zoning Ordinance, particularly Article 18-2(c), which now requires that landscaping of parking areas be brought into compliance with a change of use.
- e. The variance is not a result of the applicant's actions, as the building and parking areas have existed in their current state for decades.

This recommendation of approval is made subject to the following conditions:

- 1. The property shall be developed in accordance with the approved site plan and application.
- 2. All applicable permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Planning and Building Inspection, prior to use of the property as a church.
- 3. An executed parking agreement (in conjunction with the on-site parking) will be submitted that will meet the minimum required number of parking spaces (18 at this time) prior to the issuance of a Zoning Compliance Permit.

- 2. **C-2015-2: MAHMOUD SHALASH/ISLAMIC CENTER OF LEXINGTON** – appeals for a conditional use permit to construct a place of worship, in an Agricultural Urban (A-U) zone, at 1240 Armstrong Mill Road (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use for a religious assembly use should not adversely affect the subject or surrounding properties. Parking should be adequate for the proposed use, with provisions to provide additional parking, if necessary, and plenty of room exists for storm water drainage improvements to be built. Existing trees and landscape buffers can be maintained, and much more than ½ of this site will be maintained in open space.
- b. All necessary public facilities and services are available and adequate for the proposed church.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed and operated in accordance with the submitted application and site plan, except where changes are required by the Board.
 2. All necessary permits, including but not limited to a Zoning Compliance Permit, Grading Permits and Building Permits, shall be obtained by the applicant from the Divisions of Planning and Engineering prior to any construction on the property.
 3. A Certificate of Occupancy shall be obtained by the applicant from the Division of Building Inspection prior to occupancy of any of the structures.
 4. The site plan shall be modified to eliminate a connection to Merman Drive and relocate access to a point near the existing driveway, with the final design of the turn lane and access improvements to Armstrong Mill Road to be approved by the Division of Traffic Engineering, as necessary.
 5. All lighting shall be shielded, utilizing a shoebox or similar design, such that the light is directed away from any adjoining property line.
 6. Storm water management facilities shall be designed in accordance with the Engineering Manuals, with a minimum of an additional 10% capacity, subject to approval or acceptance by the Division of Engineering.
 7. The parking areas shall be installed and maintained per Article 16 of the Zoning Ordinance.
 8. Landscaping shall conform, at a minimum, to the requirements of Article 18 of the Zoning Ordinance.
 9. Perimeter trees (within 15 feet of the property boundary) shall be protected and maintained, unless recommended for removal by the Urban Forester due to safety or other concerns. If a perimeter tree is removed for any reason, it shall be replaced with a comparable tree, as outlined in Article 26-5(e)(2).
 10. All signage for this use shall comply with Article 17 of the Zoning Ordinance.
3. **C-2015-3: SIKH ASSOCIATION OF BLUEGRASS, INC.** – appeals for a conditional use permit to occupy the property for religious use purposes in a Single Family Residential (R-1B) and Agricultural Rural (A-R) zones, at 257-259 Swigert Avenue (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Churches, Sunday schools and places of religious assembly are permitted as conditional uses in the Agricultural Rural (A-R) zone and the Single Family Residential (R-1B) zone with Board of Adjustment approval.
- b. Granting the requested conditional use permit should not adversely affect the subject property or surrounding properties, since the existing facilities will be used. It will not affect the on-site parking, which currently complies with the requirements of Article 16 & Article 18 of the Zoning Ordinance. No new structures are proposed that would affect storm water drainage on the property, and other facilities are available and adequate.

This recommendation of approval is made subject to the following conditions:

1. That this religious assembly use be operated in accordance with the submitted application and site plan.
 2. That all necessary permits, including but not limited to a Zoning Compliance Permit and Certificate of Occupancy, be obtained from the Divisions of Planning and Building Inspection prior to occupancy and use of the facilities.
 3. That the existing septic system be approved by the Fayette County Health Department for its adequacy to serve the proposed use; and that any maintenance or upgrades, as recommended by the Health Department, be made as needed.
 4. That there be no parking on Swigert Avenue. Should additional parking be necessary, an amended conditional use permit may be requested by the applicant to expand the available on-site parking.
 5. That any outdoor lighting be directed away from adjoining properties.
 6. That signage comply with Article 17 of the Zoning Ordinance.
 7. That should appellant cease to occupy the subject property; the conditional use permit shall become null and void.
4. **C-2015-4: TURNING POINT CHURCH** - appeals for a conditional use permit to expand an existing use church use in a Light Industrial (I-1) zone, at 133 Trade Street (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the request to expand the existing conditional use permit will not adversely affect the subject or surrounding properties. No new construction will be required, and there is little likelihood of church activities disturbing the surrounding commercial and warehouse uses. Adequate off-street parking is available at convenient locations on the property.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church shall operate according to the submitted application and site plan. If further expansion is needed or desired, it will require Board of Adjustment approval.
2. Church services and other regularly scheduled activities shall be held at times that do not overlap with the times that the other occupants of the building are operating their respective businesses.

E. **Administrative Reviews**

1. **A-2015-1: OLYMPIC CONSTRUCTION, LLC.** – an administrative appeal to change two legal non-conforming uses (grocery and auto repair) to two new non-conforming uses (animal adoption/rescue and a truck terminal) in the Agricultural Rural (A-R) zone, at 7957 Old Richmond Road (Council District 12).

The Staff Recommends: Disapproval, for the following reasons:

1. Although there is a record of a grocery store and a “garage” as having been legal non-conforming uses on this property, it is questionable whether these non-conforming uses were discontinued and/or abandoned since 2004. As such, the legal non-conforming use of this property may have been lost, and the basis for this appeal would become null & void. The applicant has not provided enough information to determine the history of use of the property such that there are valid legal non-conforming uses that meet the criteria of Articles 4-3(c) and 4-3(e) of the Zoning Ordinance.
 2. Even if a clear history of legal non-conforming uses that meets the above requirement is established, the proposed use of a truck terminal on the subject property is inappropriate for the following reasons:
 - a. The proposed truck terminal involves an expansion of the scope of operation on the subject property. In particular, the paved and gravel parking areas, which were once considered accessory (i.e. ancillary) to the grocery store, have become the land area primarily involved with the new use of the truck terminal.
 - b. The truck terminal use is integrally related to the use of the illegal junk yard on the subject property, which the applicant has been required to cease. Furthermore, the junk yard use has not been requested and is not a part of this appeal.
 - c. Because of a noted sinkhole on the subject property, a truck terminal use (especially for the loading and unloading of damaged vehicles) is an inappropriate use of the property because it could introduce a direct conduit for possible groundwater contamination from vehicle fluids.
 3. Although of less concern than the truck terminal request, not enough information has been provided to approve of the animal rescue mission. There is not a clear history of legal non-conforming uses on the property over the past decade, and based on the few facts that we have, the rescue mission may be more similar to a “commercial kennel” as defined in the Zoning Ordinance, which is first permitted in a more intense zone than a retail grocery would be.
2. **A-2015-6: SIGNTRONIX** - an administrative appeal of the issuance of a Notice of Violation concerning signage in a Wholesale and Warehouse Business (B-4) zone, at 875 South Broadway (Council District 11).

The Staff Recommends: Disapproval, for the following reasons:

- a. The illumination of the subject sign is not kept constant and it has sequential lighting. As such, it is correctly considered as a “flashing or blinking” sign, per the definition found in Article 17-3(d)(4) of the Zoning Ordinance. Flashing or blinking signs are prohibited by Article 17-5(c), the only exception being for permitted informational signs. The subject sign, which contains advertising for a business activity, does not satisfy the definition of an “informational sign,” per Article 17-3(b)(12) of the Zoning Ordinance.
- b. Article 17-7 of the Zoning Ordinance, which identifies the different types of signs permitted by zone, states that “Any sign not specifically permitted shall be deemed as prohibited.” Article 17-7(g) does not list an electronic message display system as a permitted type of signage in the Wholesale and Warehouse Business (B-4) zone. Accordingly, it is correct to consider an electronic message display system in the B-4 zone as a prohibited type of signage. The appellant has acknowledged that the subject sign is an electronic message display system, per the definition found in Article 17-3(d)(5) of the Zoning Ordinance.
- c. While it is correct that window signs are exempt from the need to obtain a permit, per Article 17-4(c) of the Zoning Ordinance, it clearly states (in that same section of the ordinance) that exempt signs are “...subject to applicable restrictions contained within this Article.” Therefore, it is important to install signage in accordance with the full scope of the relevant restrictions, and not based only on selected passages, since such installations involve important business decisions.

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be February 27, 2015.

VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.